

User Friendly Graphics: How To Get the Most Out of Your Evidence in the Courtroom

Visual aids are now common tools of the litigator's trade. But to be truly effective, it's not enough that the litigator simply visualize the evidence. The way it is presented can make a big difference. In the following article, an expert in graphic evidence production explains what the litigator should emphasize in the exhibits.

By Louis Genevie, Ph.D.

Dynamic story-telling is the key to persuasion. Easily understood charts and graphs are the keys to dynamic story-telling. Unfortunately, most charts and graphs used in the courtroom are so weakly conceptualized and poorly implemented that they often obscure the message, instead of punching it home with force.

A recent age discrimination case in the federal court in Boston brought home this point. Plaintiff's counsel used several blow-ups of letters from company files which implied liability on the part of the defendant firm. Two by three foot blow-ups of the offending letters were placed on an easel and turned around, counsel was permitted by the judge to stand directly in front of the jury. As soon as he placed the first blow-up on the easel, counsel could see that the jury, despite the proximity of the charts, was having a difficult time reading the letter because of its small size. Since the jurors could not read the letter for themselves, its usefulness was severely diminished as was the jury's perception of counsel's preparation.

Defense counsel did not fare much better. Although his charts were large enough and in color, defense counsel failed to graphically illustrate the key point in the case: during the company's restructuring, just as many younger people as older people were dismissed—and all were dismissed on the basis of performance. Although this point was made verbally, counsel missed the opportunity to emphasize this fundamental fact through visual display of the evidence. Instead, defense counsel displayed a map of the United States showing the defendant firm's management districts across the country. The purpose of the map was not entirely clear, but clearly did not emphasize a key point in the presentation, and hence, had very limited value. In fact, in this particular instance, the graphic was counter-productive because it painted a picture of a large, impersonal company that could surely afford the \$500,000 in compensatory damages claimed by the plaintiff.

Graphic displays provide communication leverage, bringing the ideas and concepts they represent into the forefront

of the judge and jury's minds. As with any leverage, investment in visual displays can cut both ways, as the case above illustrates. Good graphics can be a tremendous aide to argumentation; poor graphics are not simply useless; they can be counter-productive, creating unintended reactions.

The best visual aides result when senior counsel is involved and integrates the development of graphics into the mainstream of trial preparation. The overall case presentation will be enhanced as the process of creating graphics involves the identification and clarification of the main points in the case which are then placed in a simple, easy to understand form.

Analyze the Environment: Select the Most Appropriate Presentation Medium

Before considering the type and form of visual display, it is critical that counsel understand the elements of the courtroom environment which affect how information can be presented. Key aspects of the courtroom include ambient light, the physical layout of the courtroom and the presiding judge's flexibility in allowing counsel to move from the podium during opening statements. The amount of ambient light in the courtroom is critical because the amount of light limits the type of display which can be used.

For example, most of the currently available LCD computer read-out screens produce light and unimpressive color images when displayed under normal lighting conditions in the courtroom. In such situations, counsel is best advised to consider television monitors which are not affected by the light, or 35mm projectors which tend to have more intense light for projection. Even these mid-level technical solutions are sometimes not appropriate given the lighting and physical layout of the room. In such situations, counsel should stick with old-fashioned blow-ups, the type that have been used in the courtroom for many years.

Simplicity

Simplicity implies the most fitting solution to a problem. It implies an economy of means to achieve the desired result. You do not have to dress up anything to make it "look better." It is far wiser to spend the effort searching for the essence of the underlying idea so that it can be presented as precisely as possible. Edit the material down to its essence, then find the simplest technique to show it—and then stop. Whatever does not need to be in the chart or graph to make a point should not be there.

Use only the amount of background grid that makes the data plotted on it clearly intelligible. Concentrate the jury's attention on the main points by making them big and bold to contrast against small, light and pale. Add imaginative backgrounds to illustrate the content or meaning of the sta-

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tistics. Use every element to convey the chart's meaning. The judge and jury's attention is precious, so anything you can do to make a diagram easier to understand and absorb is desirable. It is usually true that less is more.

User-Friendly Graphics

If you want the jury to react in a certain way, make it easy for them to do so. Eliminate as much effort on the part of the jury as possible. Use big and easy-to-read type. Never think of titles or labeling as a nuisance that spoils the handsomeness of the graphics. Words and pictures are integral elements in the visual story-telling process and must be in comfortable balance within the chart.

Pattern, Color and Form

The jury will expect certain things to be shown in certain ways anytime you have more than one diagram. Build upon this expectation. Avoid arbitrary changes just to create artificial variety—this leads to confusion. Instead, repeat what logically should be repeated, creating a base pattern of form and color that becomes the flow against which any departure will leap out at the judge and jury. Of course, a radical departure should be used only when it makes good sense, not for its own sake, but rather for the sake of the argument it supports. Creating patterns is a far more satisfactory method of communication than making each chart or diagram as different as you can in order to create artificial visual excitement.

Practical Ingredients: The Correct and Final Information

You cannot start plotting or creating an illustration without the final, correct information because you cannot determine the scales which define the field. Charts cannot be plotted theoretically because their effectiveness in explaining the underlying significance of the data depends on illustrating relationships precisely. That is a function of physical proportion. Therefore, you must gather the facts first and make sure they are correct.

A Clear Sense of Purpose

Counsel must articulate what he or she wishes to communicate to the jury by means of the chart or illustration. It is a misuse of the medium's potential just to show numbers in diagrammatic fashion. There must be a significance to their presentation that can be emphasized. A good diagram or illustration shows more than data; it makes clear the significance of the data at first glance. That meaning is revealed by the basic arrangement of the data, by their geometric proportions, and by the related text. Making such images is an organic process that is based on a clear grasp of the message communicated.

Ample Time

It takes time to develop the best format because it is essentially a matter of trial and error. An experienced graphic strategist can telescope time by virtue of that experience. Knowing what to look for and how to handle it helps, but time remains a critical element essential for good graphics. You must take time to do it wrong the first time and remake it without hysteria.

Persistence

The process of graphic development is so frustrating, slow, changeable, and fraught with stumbling blocks that it is much easier to give up half way through, when the obstacles appear insurmountable, than to continue the struggle. The will to see it through to the bitter end is essential.

A Sufficient Budget

Although it is cheapest to do it yourself, you ought to consider whether you would be better off investing time doing something else. Consider the best service you can afford—and opt for the even more expensive one. If it is worth doing, it is worth doing well and the expert is most likely to deliver what will pay off where it really matters: the judge and jury's attention and excitement.

The Right Talent

Most artists focus on the chart independent of how it will be used. Few realize that their work must be tempered to fit the environment and the presentation technology. Litigation artists blend the necessary graphic skills with an understanding of the reason for a chart so that he or she can make the most of every element. That is a matter of judgment—a blend of artistic and strategic judgment, something that is rarely found in art school graduates. If you want striking diagrams that are more than just visual embellishment, you need to hire a firm that has confidence in its own judgment. Such people tend to be experienced and by definition, a bit older and worth more; but the larger investment will result in better graphics and fewer hassles. Courtroom graphics are sophisticated tools of communication that cannot be done well by just anyone.